IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Hanuman Ram **Vs.** **The Civil Judge (Sr.Div.) & Addl. Chief Judicial Magistrate, Deedwana- cum -Election Tribunal, Deedwana and Others.**

D.B. SPEICAL APPEAL NO. 374 /2005
Under Article 225 of the Constitution of India against the Judgment dated 14.9.2005 passed by the Hon'ble Mr. Justice N.P. Gupta in S.B. Civil Writ Petition No. 5338/2005 Hanuman Ram Vs. Civil Judge-cum-Election Tribunal and Ors.

Date of Judgment :: 25.1.2006

PRESENT

HON'BLE MR JUSTICE RAJESH BALIA
HON'BLE MR JUSTICE R.P.VYAS

Mr G.R. Punia, for the appellant
Mr.I.R. Choudhary)
Mr.V.S. Choudhary)
Mr.Sanjeev Johari) for the respondents

BY THE COURT (PER HON'BLE JUSTICE R.BALIA):

The appeal comes up for orders on the application under Article 226(3). We have heard the learned counsel for the parties on merit of the appeal itself at the request of the learned counsel for the parties.

The petitioner is a successful candidate at the elections held for Gram Panchayat, Laroli Kala, Distt. Deedwana. The election petition was filed against him by the respondent No.2 challenging the election inter-alia on the ground that he was disqualified to contest the election in terms of Sec. 19(1)(l) of the Panchayati Raj Act, 1994, for having more than two children.

During the pendency of the said election petition, the petitioner moved an application for calling the record of the returning officer containing the nomination papers filed by him, stating that Foundation for holding him disqualified is emanating from his own declaration. Alongwith the application for summoning the record, the petitioner has also made a request for examining the said document by a hand-writing expert. The averment of the petitioner in his application was that his nomination papers have been interpolated afterwards.

Vide order dated 16.8.2005 the Civil Judge (Sr.Div.), before whom the election petition was pending, allowed the prayer for summoning the

record containing the nomination paper submitted by the petitioner at the time of election but declined to refer the document to hand writing expert for examination.

Aggrieved with the aforesaid order, the petitioner filed S.B.Civil Writ Petition No. 5338/05 for setting aside the order dated 16.8.2005 and sought the direction for sending the nomination paper for examination to hand writing expert alongwith the application. The petitioner also sought for staying further proceedings before the election Tribunal.

The writ petition was dismissed in limini by the learned Single Judge. The learned Single Judge on perusal of the entries available at Page 26 of the paper book prima facie found that there appears to be no interpolation and did not find any error in the impugned order, declining the petitioner's request for getting documents examined by hand writing expert. While dismissing the writ petition, the learned Single Judge has directed the election tribunal to decide the election petition expeditiously without being influenced by any observation made in the order.

The order of the learned Single Judge is in appeal before us.

Having heard learned counsel for the appellant, we are of the opinion that stage for considering whether the document is required to be submitted for expert opinion has not at all reached. Sections 45 to 51 of the Evidence Act lays down the scheme when the opinion of third person become relevant, to be admissible. Section 45 envisages that when the Court has to form an opinion, amongst other things, as to identity of handwriting or finger impression, opinion upon that point of persons specially skilled in question as to identity of handwriting or finger impression is relevant fact. Secondly, under Sec. 47 when the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person becomes relevant. However, both the stages can arise only after document is before the court and an issue is raised between the parties about the identity of hand writing or about the person by whom such document has been written.

Apparently, when the application was moved for summoning the document from the election officer, the stage for considering whether the court is required to form opinion on identity of document or the person by whom the said document or any part of it has been written did not arise. Suffice it to say that there was no dispute about identity of the document as the nomination paper form part of public record and submission by the petitioner was an admitted fact. Whether the document has interpolation, if so whether such interpolation took place after filing of nomination papers and by whom such interpolation took place can arise only after the document comes before the Court and is put to the respective parties. The question of author of interpolation could also arise only when it comes before the court and these issues arise between the parties about the existence of the interpolation and author of such interpolation of that document.

That being the position, the question of making a prayer for submitting the document for examination of handwriting expert and its consideration before it comes before the Court

was pre-mature at that stage when the document was summoned. Therefore, no fault can be found in the order of the election Tribunal rejecting the request for sending the document for expert opinion on such pre-mature request.

Perusal of the present proceedings appear to be for the purpose of delaying the proceedings of election petition.

In view thereof, we do not find any merit in this appeal, the same is hereby dismissed with costs.

Ad-interim order is vacated.

Cost is quantified at Rs.2,500/-.

(R.P.VYAS), J. (RAJESH BALIA),J.

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